

AMENDED IN SENATE SEPTEMBER 1, 2011

AMENDED IN SENATE JUNE 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 278

Introduced by Assembly Member Hill
(Principal coauthor: Senator Calderon)

February 8, 2011

An act to add ~~Sections 10088 and 10089~~ *Section 10080.9* to the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 278, as amended, Hill. Department of Real Estate: ~~administrative fines; citations.~~

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner, upon his or her own motion, and requires the commissioner, upon the verified complaint in writing of any person, to investigate the actions of a real estate licensee who has engaged in specified acts. If the commissioner finds that a licensee has committed those acts, existing law authorizes the commissioner to suspend or revoke a licensee's real estate license or to, instead, impose specified monetary penalties, which are required to be credited to the Recovery Account in the Real Estate Fund.

~~This bill would authorize the commissioner to adopt regulations that establish a system for the issuance of citations to licensees who are in violation of the Real Estate Law or any regulation adopted thereunder. The bill would require citations to be in writing, to indicate the provisions of law violated by a licensee, and to inform a licensee that~~

~~the licensee may request a hearing to contest the citation. The bill would authorize citations to include an order of abatement or an order to pay an administrative fine of up to \$2,500. The bill would authorize the commissioner to take disciplinary action against a licensee who fails to pay a fine within 30 days of assessment of the fine, as specified. The bill would also authorize the commissioner to adopt regulations to establish a similar system for the issuance of administrative citations to unlicensed persons acting in the capacity of a licensee. bill would authorize the commissioner to issue citations to unlicensed persons the commissioner believes to be engaging in activities for which a real estate license is required or to licensees who are in violation of any provision of the Real Estate Law or any rule or order thereunder. The bill would authorize citations to include an order to correct the violation or to include an administrative penalty of up to \$2,500. The bill would require any fines collected pursuant to these provisions to be credited to the Recovery Account and made available for specified purposes upon appropriation by the Legislature.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10080.9 is added to the Business and
2 Professions Code, to read:
3 10080.9. (a) If, upon inspection, examination, or investigation,
4 the commissioner has cause to believe that a person who does not
5 possess a real estate license is engaged or has engaged in activities
6 for which a real estate license is required, or that a licensee is
7 violating or has violated any provision of this division or any rule
8 or order thereunder, the commissioner or his or her designated
9 representative may issue a citation to that person in writing,
10 describing with particularity the basis of the citation. Each citation
11 may contain an order to correct the violation or violations
12 identified and a reasonable time period or periods by which the
13 violation or violations must be corrected. In addition, each citation
14 may assess an administrative fine not to exceed two thousand five
15 hundred dollars (\$2,500), which shall be deposited into the
16 Recovery Account of the Real Estate Fund and shall, upon
17 appropriation by the Legislature, be available for expenditure for
18 the purposes specified in Chapter 6.5 (commencing with Section

1 10470). In assessing a fine, the commissioner shall give due
2 consideration to the appropriateness of the amount of the fine with
3 respect to factors such as the gravity of the violation, the good
4 faith of the person cited, and the history of previous violations. A
5 citation issued and a fine assessed against and paid by a licensee
6 pursuant to this section shall be in lieu of other administrative
7 discipline by the commissioner for the offense or offenses cited.

8 (b) Notwithstanding subdivision (a), nothing in this section shall
9 prevent the commissioner from issuing an order to desist and
10 refrain from engaging in a specific business activity or activities
11 or an order to suspend all business operations to a person who is
12 engaged in or has engaged in continued or repeated violations of
13 this part. In any of these circumstances, the sanctions authorized
14 under this section shall be separate from, and in addition to, all
15 other administrative, civil, or criminal penalties.

16 (c) If, within 30 days from the receipt of the citation or the
17 citation and fine, the person cited fails to notify the commissioner
18 that he or she intends to request a hearing as described in
19 subdivision (d), the citation or the citation and fine shall be deemed
20 final. If a hearing is not requested pursuant to this section, the
21 citation and any fine assessed and paid thereunder, while
22 constituting discipline for a violation of this division or a rule or
23 order thereunder, shall not be reported as disciplinary action taken
24 by the department.

25 (d) Any hearing under this section shall be conducted in
26 accordance with Chapter 5 (commencing with Section 11500) of
27 Part 1 of Division 3 of Title 2 of the Government Code.

28 (e) After the exhaustion of the review procedures provided for
29 in this section, the commissioner may apply to the appropriate
30 superior court for a judgment in the amount of any administrative
31 penalty imposed pursuant to subdivision (a) and an order
32 compelling the cited person to comply with the order of the
33 commissioner. The application, which shall include a certified
34 copy of the final order of the commissioner, shall constitute a
35 sufficient showing to warrant the issuance of the judgment and
36 order.

37 (f) Failure of any person to comply with the terms of a citation
38 or pay a fine assessed pursuant to this section, within a reasonable
39 period specified by the commissioner, shall subject that person to
40 disciplinary action by the commissioner. In no event may a license

1 *be renewed if an unpaid fine remains outstanding or the terms of*
2 *a citation have not been complied with.*

3 ~~SECTION 1. Section 10088 is added to the Business and~~
4 ~~Professions Code, to read:~~

5 ~~10088. (a) The commissioner may adopt regulations that~~
6 ~~establish a system for the issuance of, and, except with respect to~~
7 ~~violations that have resulted in serious financial loss to a member~~
8 ~~of the public, may issue, citations to licensees who are in violation~~
9 ~~of this part or any regulation adopted pursuant to this part. A~~
10 ~~citation may contain an order of abatement or an order to pay an~~
11 ~~administrative fine.~~

12 ~~(b) The system for the issuance of citations shall satisfy all of~~
13 ~~the following:~~

14 ~~(1) Citations shall be in writing and describe with particularity~~
15 ~~the nature of the violation, including specific reference to the~~
16 ~~provision of law determined to have been violated.~~

17 ~~(2) Whenever appropriate, the citation shall contain an order of~~
18 ~~abatement fixing a reasonable time for abatement of the violation.~~

19 ~~(3) In no event shall the administrative fine assessed by the~~
20 ~~department exceed two thousand five hundred dollars (\$2,500) for~~
21 ~~each inspection or each investigation made with respect to the~~
22 ~~violation. In assessing a fine, the commissioner shall give due~~
23 ~~consideration to the appropriateness of the amount of the fine with~~
24 ~~respect to factors such as the gravity of the violation, the good~~
25 ~~faith of the licensee, and the history of previous violations.~~

26 ~~(4) A citation or fine assessment issued pursuant to a citation~~
27 ~~shall inform the licensee that if the licensee desires a hearing to~~
28 ~~contest the finding of a violation, that hearing may be requested~~
29 ~~by written notice to the commissioner within 30 days of the date~~
30 ~~of issuance of the citation or assessment. If a hearing is not~~
31 ~~requested pursuant to this section, payment of any fine shall not~~
32 ~~constitute an admission of the violation charged, and the payment~~
33 ~~shall not be reported in the department's real estate bulletin.~~
34 ~~Hearings shall be held pursuant to Chapter 5 (commencing with~~
35 ~~Section 11500) of Part 1 of Division 3 of Title 2 of the Government~~
36 ~~Code.~~

37 ~~(5) Failure of a licensee to pay a fine within 30 days of the date~~
38 ~~of assessment, unless the citation is being appealed, may result in~~
39 ~~disciplinary action being taken by the commissioner. Where a~~
40 ~~citation is not contested and a fine is not paid, the full amount of~~

1 the assessed fine shall be added to the fee for renewal of the license.
2 A license shall not be renewed without payment of the renewal
3 fee and fine.

4 (e) The system for the issuance of citations may contain the
5 following provisions:

6 (1) A citation may be issued without the assessment of an
7 administrative fine.

8 (2) Assessment of an administrative fine may be limited to only
9 particular violations of this part.

10 (3) Notice may be given to a broker when a citation is issued
11 to any salesperson or broker associate employed by the broker.

12 (d) Notwithstanding any other provision of law, if a fine is paid
13 to satisfy an assessment based on the finding of a violation,
14 payment of the fine shall be represented as satisfactory resolution
15 of the matter for purposes of public disclosure.

16 (e) Administrative fines collected pursuant to this section shall
17 be credited to the Recovery Account of the Real Estate Fund and
18 shall, upon appropriation by the Legislature, be available for
19 expenditure for the purposes specified in Chapter 6.5 (commencing
20 with Section 10470).

21 (f) The establishment of an administrative citation system
22 pursuant to this section does not preclude the use of other
23 disciplinary authority of the commissioner.

24 SEC. 2. Section 10089 is added to the Business and Professions
25 Code, to read:

26 10089. The commissioner may, in addition to the administrative
27 citation system authorized by Section 10088, adopt regulations to
28 establish a similar system for the issuance of an administrative
29 citation to an unlicensed person acting in the capacity of a licensee.
30 The administrative citation system authorized by this section shall
31 meet the requirements of Section 10088 and may not be applied
32 to an unlicensed person otherwise exempted from the provisions
33 of this part. The establishment of an administrative citation system
34 for unlicensed activity does not preclude the use of other
35 disciplinary authority of the commissioner for unlicensed activities.